

STATE OF MICHIGAN
COURT OF APPEALS

CITY OF STERLING HEIGHTS,

Plaintiff/Cross-Defendant-Appellee,

v

LAWRENCE E. HAFF, LELAND G. RUMPH,
and RUMPH CONSTRUCTION, INC.,

Defendants/Cross-Plaintiffs-
Appellants.

UNPUBLISHED

January 24, 2003

No. 234820

Macomb Circuit Court

LC No. 00-004555-CZ

Before: Cooper, P.J., and Bandstra and Talbot, JJ.

PER CURIAM.

Defendants appeal as of right the trial court's order granting plaintiff's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant Lawrence E. Haff owns approximately four acres of land within plaintiff's municipal boundaries. The land is zoned for single family residences. Haff leases the property to defendant Leland G. Rumph, who uses it to store heavy equipment owned by his business, defendant Rumph Construction, Inc., an excavation firm. Plaintiff received complaints from adjacent property owners regarding the use of Haff's property as a storage facility. Plaintiff issued Haff an ordinance violation citation. Haff filed a petition with plaintiff's zoning board of appeals (ZBA) seeking a use variance. The ZBA denied Haff's request for a use variance.

Haff appealed the ZBA's decision to circuit court.¹ He argued that the city had granted a variance by estoppel due to its failure to enforce its zoning ordinance notwithstanding its knowledge of the use of the property, and that the doctrine of laches precluded the city from enforcing the ordinance. The trial court affirmed the ZBA's decision. The court found that the record showed that the city's knowledge of the use of the property was limited and did not rise to the level of knowledge of a zoning violation. The court found that no exceptional circumstances existed to warrant applying the doctrine of equitable estoppel to preclude the city from enforcing

¹ *Haff v City of Sterling Heights*, Macomb Circuit Court Docket No. 98-5451-AW.

the zoning ordinance, and also rejected Haff's argument that the doctrine of laches precluded the city from enforcing the zoning ordinance.

Subsequently, plaintiff filed the instant action alleging that the non-conforming use of the property constituted a nuisance per se. Plaintiff sought an injunction barring defendants from using the property as a storage facility. Defendants answered and asserted the affirmative defense of laches, and also filed a counter-complaint in which they alleged that plaintiff was equitably estopped from enforcing the zoning ordinance. Plaintiff moved for summary disposition pursuant to MCR 2.116(C)(7), (8), and (9), arguing that defendants' counter-complaint failed to state a claim on which relief could be granted because equitable estoppel is not an independent cause of action, and that defendants' claims and defenses were barred by the doctrines of res judicata and/or collateral estoppel.

The trial court granted plaintiff's motion for summary disposition pursuant to MCR 2.116(C)(7) and (8). The court dismissed defendants' counter-complaint on the ground that equitable estoppel is not an independent cause of action. *Conagra, Inc v Farmers State Bank*, 237 Mich App 109, 140-141; 602 NW2d 390 (1999). In addition, the court found that its decision in the prior action clearly addressed the affirmative defenses raised by defendants in this case, and concluded that those issues need not be addressed a second time. The court granted plaintiff summary disposition on its complaint based on defendants' admission that the use of the property violated the applicable zoning ordinance, and permanently enjoined defendants from using the property as a construction equipment storage facility. The court denied defendants' motion for reconsideration.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

Res judicata bars a subsequent action between the same parties when the facts or evidence essential to the action are identical to the facts or evidence in a prior action. *Dart v Dart*, 460 Mich 573, 586; 597 NW2d 82 (1999). Res judicata requires that: (1) the prior action was decided on the merits; (2) the decree in the prior action was a final decision; (3) the matter contested in the second case was or could have been resolved in the first case; and (4) both actions involved the same parties or their privies. *Id.*; *Kosiel v Arrow Liquors Corp*, 446 Mich 374, 379; 521 NW2d 531 (1994). The applicability of the doctrine of res judicata is reviewed de novo. *Pierson Sand & Gravel, Inc v Keeler Brass Co*, 460 Mich 372, 379; 596 NW2d 153 (1999).

Collateral estoppel precludes the relitigation of an issue in a subsequent, different cause of action between the same parties or their privies when the prior action culminated in a valid final judgment and the issue was actually and necessarily litigated in that action. *Ditmore v Michalik*, 244 Mich App 569, 577; 625 NW2d 462 (2001). The parties must have had a full and fair opportunity to litigate the issue in the first action. *Kowatch v Kowatch*, 179 Mich App 163, 168; 445 NW2d 808 (1989). The applicability of the doctrine of collateral estoppel is reviewed de novo. *Minicuci v Scientific Data Management, Inc*, 243 Mich App 28, 34; 620 NW2d 657 (2000).

Defendants argue that the trial court erred by granting plaintiff's motion for summary disposition on the basis of res judicata and/or collateral estoppel.² They acknowledge that the issue of laches was raised in Haff's brief in the prior action, but contend that the issue was not fully developed in either that case or the instant case. We disagree and affirm. In Haff's appeal of the ZBA decision, he specifically argued that the doctrine of laches precluded the city from enforcing the zoning ordinance to preclude the use of the property as a storage facility. In its decision affirming the ZBA's decision the trial court addressed Haff's argument regarding the applicability of the doctrine of laches, and found it to be without merit. The issue was raised in the pleadings and the record presented to the court, and was decided on the merits by the court. Thus, the issue was actually litigated in the prior action. *VanDeventer v Michigan National Bank*, 172 Mich App 456, 463; 432 NW2d 338 (1988).

Defendants do not specify what evidence Haff was precluded from presenting in support of his argument in that case. They have not established that the issue was not fully and fairly litigated in the prior action. *Kowatch, supra*. The trial court did not err in concluding that plaintiff was entitled to summary disposition on the basis that the doctrine of collateral estoppel precluded relitigation of the issue of the applicability of the doctrine of laches.

We affirm.

/s/ Jessica R. Cooper
/s/ Richard A. Bandstra
/s/ Michael J. Talbot

² The trial court's opinion and order granting plaintiff's motion for summary disposition sets out the standard for application of both res judicata and collateral estoppel, but seems to rely primarily on the doctrine of collateral estoppel for its decision.